

**§ 1-507.45. Executory contracts.**

(a) Adoption or Rejection of Executory Contract. – Except as otherwise provided in subsection (g) of this section, with court approval, a receiver may adopt or reject an executory contract of the debtor that is part of the receivership property. The court may condition the receiver's adoption and continued performance of the executory contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the executory contract within 90 days after the time of appointment, or such longer or shorter period as the court upon motion of the receiver or a party in interest filed during such period may order, the receiver is deemed to have rejected the executory contract.

(b) Performance Not Adoption. – A receiver's performance of an executory contract before court approval of its adoption or rejection under subsection (a) of this section is not an adoption of the executory contract and does not preclude the receiver from seeking approval to reject the executory contract.

(c) Ipso Facto Clauses. – A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the executory contract because of the appointment of the receiver or the financial condition of the debtor does not affect a receiver's power under subsection (a) of this section to adopt the executory contract.

(d) Termination of Executory Contract. – A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the executory contract under subsection (a) of this section. Rejection is a breach of the executory contract effective immediately before the time of appointment. A claim for damages for rejection of the executory contract must be submitted by the later of (i) the time set for submitting a claim in the receivership or (ii) 30 days after the court approves the rejection.

(e) Assignment of Executory Contract. – If, at the time a receiver is appointed, the debtor has the right to assign the executory contract relating to receivership property under the laws of this State, the receiver may assign the executory contract with court approval.

(f) Rejection of Executory Contract for Sale of Real Property. – If a receiver rejects an executory contract under subsection (a) of this section for the sale of receivership property that is real property in possession of the purchaser or a real property timeshare interest, the purchaser may (i) treat the rejection as a termination of the executory contract, in which case the purchaser has a lien on the real property for the recovery of any part of the purchase price the purchaser paid or (ii) retain the purchaser's right to possession under the executory contract, in which case the purchaser shall continue to perform all obligations arising under the executory contract and may offset any damages caused by nonperformance of an obligation of the debtor after the date of the rejection; however, the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(g) Rejection of Unexpired Lease of Real Property. – A receiver may not reject an unexpired lease of real property under which the debtor is the landlord under any of the following circumstances:

- (1) The tenant occupies the leased premises as the tenant's primary residence, unless (i) the tenant is the child, spouse, partner, or parent of the debtor; (ii) the tenant does not have a written lease; (iii) the lease is terminable at will; (iv) the rent paid by the tenant is substantially less than the fair market rental value for the property, provided the rent has not been reduced or subsidized due to a federal or State subsidy; or (v) the receiver sells the property to a purchaser who will occupy the premises as a primary residence, in which case the tenant shall be required to vacate the property within 90 days of the sale of the property.

- (2) The receiver was appointed at the request of a person other than the mortgagee under a mortgage or the beneficiary of a deed of trust encumbering the real property.
- (3) The receiver was appointed at the request of a mortgagee under a mortgage or a beneficiary of a deed of trust encumbering the real property and (i) the lease is superior in priority to the lien of the mortgage or the deed of trust; (ii) the tenant has an enforceable agreement with the mortgagee or beneficiary or holder of a senior lien on the real property under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease; (iii) the mortgagee or beneficiary has consented to the lease, either in a signed record or by its failure to object that the lease violated the mortgage or deed of trust; or (iv) the terms of the lease were commercially reasonable at the time the lease was agreed to, and the tenant did not know or have reason to know that the lease violated the mortgage or deed of trust. (2020-75, s. 1.)